

House Bill 248 (AS PASSED HOUSE AND SENATE)

By: Representatives Barnard of the 166th, Ehrhart of the 36th, Drenner of the 86th, Everson of the 106th, Reese of the 98th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Article 3 of Chapter 8 of Title 12 of the Official Code of Georgia Annotated, relating to hazardous waste, so as to provide for voluntary and timely investigation and remediation of properties where there have been releases of regulated substances into the environment for the purpose of reducing human and environmental exposure to safe levels; to provide a short title; to provide legislative declarations; to define certain terms; to provide for power and duties of the director of the Environmental Protection Division; to provide criteria for qualifying for a voluntary remediation program; to provide for corrective action; to provide for program standards and policies; to provide for rules and regulations; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Article 3 of Chapter 8 of Title 12 of the Official Code of Georgia Annotated, relating to hazardous waste, is amended by adding a new part to read as follows:

"Part 3

12-8-100.

This part shall be known and may be cited as the 'Georgia Voluntary Remediation Program Act.'

12-8-101.

(a) It is declared to be the public policy of the State of Georgia to encourage the voluntary and timely investigation and remediation of properties where there have been releases of regulated substances into the environment for the purpose of reducing human and environmental exposure to safe levels, to protect current and likely future use of

groundwater, and to ensure the cost-effective allocation of limited resources that fully accomplish the provisions, purposes, standards, and policies of this part.

(b) The General Assembly declares its intent to encourage voluntary and cost-effective investigation and remediation of qualifying properties under this part and that provisions of this part shall apply and take precedence over any conflicting provisions, regulations, or policies existing under Part 2 of this article with regard to any properties properly enrolled in the voluntary remediation program created under this part.

12-8-102.

(a) Unless otherwise provided in this part, the definition of all terms included in Code Sections 12-8-62, 12-8-92, and 12-8-202 shall be applicable to this part.

(b) As used in this part, the term:

(1) 'Cleanup standards' means those rules and regulations adopted by the board pursuant to Code Section 12-8-93.

(2) 'Constituents of concern' means the specific regulated substances that may contribute to unacceptable exposure at a site.

(3) 'Controls' means institutional controls or engineering controls.

(4) 'Engineering controls' means any physical mechanism, device, measure, system, or actions taken at a property that minimize the potential for exposure, control migration or dispersal, or maintain the effectiveness of other remedial actions. Engineering controls may include, without limitation, caps, covers, physical barriers, containment structures, leachate collection systems, ground water or surface water control systems, solidification, stabilization, treatment, fixation, slurry walls, and vapor control systems. Engineered property development features shall be acceptable as engineering controls provided these features physically control or eliminate the potential for exposure to contaminants of concern or control migration.

(5) 'Exposure' means contact of a constituent of concern with a receptor.

(6) 'Exposure domain' means the contaminated geographical area or areas of a site that can result in exposure to a particular receptor by a specified exposure pathway: the soil exposure domain for routine surficial contact with site soils is the soil area impacted by site constituents of concern from the ground surface down to a depth of two feet below ground surface; the soil exposure domain for exposure of construction workers or underground utility workers is the impacted area of site soils from the ground surface down to the depth of construction; and the soil exposure domain for protection of groundwater at an established point of exposure is the impacted area of site soils from the ground surface down to the uppermost groundwater zone.

(7) 'Exposure pathway' means a route by which a receptor comes into contact with a constituent of concern.

(8) 'Fate and transport parameters' means quantitative factors that describe the various media through which constituents of concern migrate from a source of release to a receptor.

(9) 'Institutional controls' means legal or administrative measures that minimize the potential for human exposure to contaminants of concern or protect and enhance the integrity of a remedy or engineering controls. Examples include, without restriction: easements, covenants, deed notices, well drilling or groundwater use prohibitions, zoning restrictions, digging restrictions, orders, building permit conditions, and land-use restrictions.

(10) 'Point of demonstration wells' means monitoring wells located between the source of site groundwater contamination and the actual or estimated downgradient point of exposure.

(11) 'Point of exposure' means the nearest of the following locations:

(A) The closest existing down gradient drinking water supply well;

(B) The likely nearest future location of a downgradient drinking water supply well where public supply water is not currently available and is not likely to be made available within the foreseeable future; or

(C) The hypothetical point of drinking water exposure located at a distance of 1000 feet downgradient from the delineated site contamination under this part.

(12) 'Proof of financial assurance' means a mechanism, in a form specified by the director, designed to demonstrate that sufficient funds will be available to implement and maintain specific actions or controls. Mechanisms for proof of financial assurance include, but are not limited to, insurance, trust funds, surety bonds, letters of credit, performance bonds, certificates of deposit, financial tests, and corporate guarantees.

(13) 'Receptor' means any human or sensitive organism which is or has the reasonable potential to be adversely affected by the release of constituents of concern.

(14) 'Representative concentration' means the average concentration to which a specified receptor is exposed over an exposure duration within a relevant exposure domain for soils or at an established or estimated point of exposure for groundwater and consistent with United States Environmental Protection Agency guidance for determination of average exposure concentration.

(15) 'Voluntary remediation program' means the program established under this part.

(16) 'Voluntary remediation property' means a qualifying property enrolled in the voluntary remediation program.

(17) 'Technical impracticability' means the inability to fully delineate or remediate contamination without incremental expenditures disproportionate to the incremental benefit. An example may include, without limitation, dense non-aqueous phase liquids in fractured bedrock settings.

12-8-103.

The board shall have the power to adopt, promulgate, modify, amend, and repeal rules and regulations to implement and enforce the provisions of this part as necessary to provide for the investigation and remediation of voluntary remediation properties, to the extent necessary to facilitate the accomplishment of the provisions, purposes, standards, and policies of this part.

12-8-104.

(a) The director shall have the power and duty:

(1) To make determinations, in accordance with procedures and criteria enumerated in this part, as to whether a property qualifies and an applicant is eligible for the voluntary remediation program;

(2) To approve, in accordance with procedures and criteria enumerated in this part and rules and regulations promulgated pursuant to this part, voluntary remediation plans;

(3) To approve, in accordance with procedures and criteria enumerated in this part and rules and regulations promulgated pursuant to this part, compliance status reports;

(4) To concur with certifications of compliance;

(5) To collect application fees from participants; and

(6) To grant waivers of all or any portion of the fees provided by this part for any small business or for any county, municipality, or other political subdivision of this state.

(b) The powers and duties described in subsection (a) of this Code section may be exercised and performed by the director through such duly authorized agents and employees as the director deems necessary and proper.

12-8-105.

In order to be considered a qualifying property for the voluntary remediation program under this part, a property shall meet the following criteria:

(1) The property must be listed on the inventory under Part 2 of this article or be a property which meets the criteria of Code Section 12-8-205 or otherwise have a release of regulated substances into the environment;

(2) The property shall not:

(A) Be listed on the federal National Priorities List pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq.;

(B) Be currently undergoing response activities required by an order of the regional administrator of the federal Environmental Protection Agency; or

(C) Be a facility required to have a permit under Code Section 12-8-66;

(3) Qualifying the property under this part would not violate the terms and conditions under which the division operates and administers remedial programs by delegation or similar authorization from the United States Environmental Protection Agency; and

(4) Any lien filed under subsection (e) of Code Section 12-8-96 or subsection (b) of Code Section 12-13-12 against the property shall be satisfied or settled and released by the director pursuant to Code Section 12-8-94 or Code Section 12-13-6.

12-8-106.

A participant in the voluntary remediation program must meet the following criteria:

(1) Be the property owner of the voluntary remediation property or have express permission to enter another's property to perform corrective action including, to the extent applicable, implementing controls for the site pursuant to written lease, license, order, or indenture;

(2) Not be in violation of any order, judgement, statute, rule, or regulation subject to the enforcement authority of the director; and

(3) Meet other such criteria as may be established by the board pursuant to Code Section 12-8-103.

12-8-107.

(a) In order to enroll any qualifying property in the voluntary remediation program described in this part, an applicant shall submit to the director a voluntary remediation plan prepared by a registered professional engineer or a registered professional geologist who is registered with the State Board of Registration for Professional Engineers and Land Surveyors or the State Board of Registration for Geologists and who has experience in responsible charge of the investigation and remediation of such releases. The voluntary remediation plan shall be in such streamlined form as may be prescribed by the director; provided, however, that the plan shall, at minimum, enumerate and describe those actions planned to bring the qualifying property into compliance with the applicable cleanup standards, with one or more registered professionals to be retained by the applicant at its sole cost to oversee the investigation and remediation described in the plan; all in accordance with the provisions, purposes, standards, and policies of the voluntary

remediation program. The voluntary remediation plan shall be considered an application for enrollment in the voluntary remediation program, and a nonrefundable application fee of \$5,000.00 shall be submitted with the application. The director may, at any time, invoice the participant for any costs to the division in reviewing the application or subsequent document that exceed the initial application review fee, including reasonably detailed itemization and justification of the costs. Failure to remit payment within 60 days of receipt of such invoice may cause rejection of the participant from the voluntary remediation program. The director may not issue a written concurrence with a certification of compliance if there is an outstanding fee to be paid by the participant.

(b) Upon the director's approval of the voluntary remediation plan described in subsection (a) of this Code section, the qualifying property shall be deemed enrolled, and the applicant deemed a participant, in the voluntary remediation program. It shall be the responsibility of the participant to cause one or more registered professionals to oversee the implementation of said plan in accordance with the provisions, purposes, standards, and policies of this part. The registered professional shall submit at least semi-annual status reports to the director describing the implementation of the plan during the preceding period. Upon request of the applicant, the director shall have the discretion to approve annual or longer periods for submittal of status reports. Within 30 days of the director's approval of the voluntary remediation plan described in subsection (a) of this Code section, the director shall cause any relevant voluntary remediation property listed on the inventory under Part 2 of this article to be designated as undergoing corrective action pursuant to the voluntary remediation program.

(c) The director may issue an order requiring the participant to submit proof of financial assurance for continuing actions or controls upon issuance of the director's approval with the voluntary remediation plan.

(d) The participant may terminate at any time the enrollment of the property in the voluntary remediation program and the participant's requirements under this part. The director may terminate, at any time prior to approval of the compliance status report described in subsection (e) of this Code section, the enrollment of the property in the voluntary remediation program and the participant's requirements under this part if the director determines that either:

(1) The participant has failed to implement the voluntary remediation plan in accordance with the provisions, purposes, standards, and policies of the voluntary remediation program; or

(2) Such continued enrollment would result in a condition which poses an imminent or substantial danger to human health and the environment.

(e) Upon completion of corrective action under this Code section, the participant shall cause to be prepared a compliance status report confirming consistency of the corrective action with the provisions, purposes, standards, and policies of the voluntary remediation program and certifying the compliance of the relevant voluntary remediation property with the applicable cleanup standards in effect at the time.

(f) Upon receipt of the compliance status report described in subsection (d) of this Code section, a decision of concurrence with the report and certification shall be issued on evidence satisfactory to the director that it is consistent with the provisions, purposes, standards, and policies of the voluntary remediation program. The participant shall comply with the applicable public participation requirements for compliance status reports as promulgated pursuant to Part 2 of this article. Within 90 days of the director's written concurrence, the director shall cause the property to be removed from the inventory under Part 2 of this article.

(g) In addition to other provisions of this part:

(1) The director shall remove the voluntary remediation property from the inventory if the participant demonstrates to the director at the time of enrollment, in accordance with rules and regulations promulgated by the board pursuant to Part 2 of this article, that a release exceeding a reportable quantity did not exist at the voluntary remediation property, unless the director issues a decision that such release poses an imminent or substantial danger to human health and the environment;

(2) The participant shall not be required to perform corrective action or to certify compliance for groundwater if the voluntary remediation property was listed on the inventory as a result of a release to soil exceeding a reportable quantity for soil but was not listed on the inventory as a result of a release to groundwater exceeding a reportable quantity, and if the participant further demonstrates to the director at the time of enrollment that a release exceeding a reportable quantity for groundwater does not exist at the voluntary remediation property; and the groundwater protection requirements for soils shall be based on protection of the established point of exposure for groundwater as provided under this part. The director may require annual groundwater monitoring for up to five years for a voluntary remediation property removed from the inventory pursuant to this paragraph unless the director determines that further monitoring is necessary to protect human health and the environment; and

(3) The limitations provided under subparagraph (c)(3)(B) of Code Section 12-2-2 shall not apply to the director's decisions or actions under this part.

(h) Any voluntary remediation property or site relying on controls, including, but not limited to, groundwater use restrictions for the purposes of certifying compliance with cleanup standards, shall execute a covenant restricting such use in conformance with

O.C.G.A. 44-16-1, et seq., the 'Georgia Uniform Environmental Covenants Act.' The division shall maintain an inventory of such properties as provided for in that statute.

12-8-108.

At the participant's option, any or all of the following standards and policies may be considered and used in connection with the investigation and remediation of a voluntary remediation property under this part:

(1) SITE DELINEATION CONCENTRATION CRITERIA. Satisfactory evidence of the definition of the horizontal and vertical delineation of soil or groundwater contamination for the purposes of this part may be determined on the basis of any of the following concentrations; provided, however, that the provisions of subparagraphs (B) and (C) of this paragraph shall not be used if the concentrations are higher than as provided in subparagraph (E) of this paragraph:

(A) Concentrations from an appropriate number of samples that are representative of local ambient or anthropogenic background conditions not affected by the subject site release;

(B) Soil concentrations less than those concentrations that require notification under standards promulgated by the board pursuant to Part 2 of this article;

(C) Two times the laboratory lower detection limit concentration using an applicable analytical test method recognized by the United States Environmental Protection Agency, provided that such concentrations do not exceed all cleanup standards;

(D) For metals in soils, the concentrations reported for Georgia undisturbed native soil samples as reported in the United States Geological Survey (USGS) Open File Report 8 1-197 (Boerngen and Shacklette, 1981), or such later version as may be adopted by rule or regulation of the board; or

(E) Default, residential cleanup standards;

(2) EXPOSURE PATHWAY. A site-specific exposure pathway shall be considered complete if there are no discontinuities in or impediments to constituent of concern movement, including without limitation controls, from the source of the release to the receptor. Otherwise, the exposure pathway shall be incomplete and there shall be no exposure pathway that requires evaluation;

(3) REPRESENTATIVE EXPOSURE CONCENTRATIONS. Compliance with site-specific cleanup standards shall be determined on the basis of representative concentrations of constituents of concern in soils across each applicable soil exposure domain, and the representative concentrations for groundwater at a point of exposure;

(4) POINT OF DEMONSTRATION MONITORING FOR GROUNDWATER. Concentrations of site-specific constituents of concern in groundwater shall be measured and evaluated at

a point of demonstration well to demonstrate that groundwater concentrations are protective of any established downgradient point of exposure;

(5) CLEANUP STANDARDS FOR SOIL. Compliance with site-specific cleanup standards for soil may be based on:

(A) Direct exposure factors for surficial soils within two feet of the land surface;

(B) Construction worker exposure factors for subsurface soils to a specified subsurface construction depth; and

(C) Soil concentrations for protection of groundwater criteria (at an established point of exposure for groundwater as defined under this part) for soils situated above the uppermost groundwater zone.

Whenever such depth-specific soil criteria are applied, the voluntary remediation plan for the site shall include a description of the continuing actions and controls necessary to maintain compliance;

(6) AVAILABLE CLEANUP STANDARDS. Any cleanup standard lawfully promulgated pursuant to Code Section 12-8-93 that is protective of human health and the environment and accomplishes the provisions, purposes, standards, and policies of this part may be used without demonstrating that a different cleanup standard is inappropriate or impracticable;

(7) FATE AND TRANSPORT PARAMETERS. Compliance with site-specific cleanup standards may be determined on the basis of any fate and transport model recognized by the United States Environmental Protection Agency or United States Geological Survey and using most probable representative values for model parameters as adopted by the board;

(8) SOURCE MATERIAL. Compliance with site-specific cleanup standards that require that source material be removed may be satisfied when such material is removed, decontaminated, or otherwise immobilized in the subsurface, to the extent practicable; and

(9) TECHNICAL IMPRACTICABILITY. Site delineation or remediation beyond the point of technical impracticability shall not be required if the site does not otherwise pose an imminent or substantial danger to human health and the environment."

SECTION 2.

This Act shall become effective on the first day of the month following the month in which it is approved by the Governor or in which it becomes law without such approval.

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.